

REMARKS

This responds to the Office Action mailed on January 10, 2008.

Claims 1, 7, 10-12, 14, 18, 22-24, 25, 31, 34-36, 37 and 41-45 are amended, claims 5, 8, 9, 20, 21, 29, 32 and 33 are canceled, and no claims are added; as a result, claims 1-4, 6, 7, 10-19, 22-28, 30, 31 and 34-45 are now pending in this application.

Information Disclosure Statement

Applicants submitted a Supplemental Information Disclosure Statement and a 1449 Form on September 22, 2006. Applicants respectfully request that initialed copies of the 1449 forms be returned to Applicants' Representatives to indicate that the cited references have been considered by the Examiner.

§112 Rejection of the Claims

Claims 41-45 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. Responsive to the rejection, Applicants have amended claims 41-45 to include the limitations previously cancelled from independent claim 1.

Amendments to Claims

Applicant are mindful that the proposed amendment cannot, as a matter of right, be entered. Nonetheless, Applicants believe that the proposed amendment requires only a cursory review by the Examiner to remove issues from appeal. The proposed amendments to the independent claims require no additional search because they merely include the limitations of dependent claims 8, 9, 20, 21, 32 and 33. The proposed amendment to claim 41 includes limitations that previously appeared in claim 1. Accordingly, claim 41 also requires no additional search. Applicant furthermore believes that all claims are now in a condition for allowance, which is earnestly solicited

§103 Rejection of the Claims

Claims 7-10, 12, 14-16, 18-22, 24, 31-34 and 36-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay.

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that prior art references when combined do not teach or suggest all of the claim limitations of the independent claims of the present application.

Applicable Law

In rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. See M.P.E.P. §2142.

Further, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*¹. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*². Office personnel must rely on the applicant's disclosure to properly determine the meaning of the claims. *Markman v. Westview Instruments*³.

Applicants believe that the issue of patentability over eBay is best understood with regard to claim 1 which has been amended to include the limitations from dependent claims 8 and 9.

Argument

Applicant believes that the issue of patentability over eBay is best understood with regard to the limitations of claim 1. Claim 1, as amended to include the limitations from claims 8 and 9, requires the following:

determining an availability of an offering in a particular region based on offering listing characteristics including a listing currency of the offering...

¹ 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

² 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

³ 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (*en banc*), *aff'd*, U.S., 116 S. Ct. 1384 (1996).

The Final Office Action, in rejecting claims 8 and 9, does not point to any specific passage of eBay with regard to the above limitation; however, Applicants note that eBay relates the following:



[Home](#) [Listings](#) [Buyers](#) [Sellers](#) [Search](#) [Help](#) [News/Chat](#) [Site Map](#)

Browse items located in the UK

Updated: 07/10/99, 01:00 BST Check eBay official time

Use your browser's reload button to see the latest version.

☐ Search only in Antiques : Musical Instruments

☐ Search within titles and descriptions

[Sell your item](#) in the Antiques : Musical Instruments category

Buy [books](#) about musical instruments now, or search for [books](#) on eBay about musical instruments.

Top : Antiques : Musical Instruments

Current Auctions

[Browse items available to UK buyers](#) [Browse items located in the UK](#)

[Current](#) [New Today](#) [Ending Today](#) [Completed](#) [Going, Going, Gone](#) [Gallery](#)

Featured Auctions in Musical Instruments

Current Auctions

To find out how to be listed in this section and seen by thousands, please [visit this link](#).

All Items in Musical Instruments

Current Auctions

Item	Price	Bids	Ends BST
Gibson 350T 1961 Sharp-cut PAF's <i>pink</i>	\$1250.00	-	13/10 23:02 BST
STYLOPHONE - Cool 1960's Instrument	£10.00	-	13/10 19:58 BST
Marshall jrm 100w super lead !!!!	\$1000.00	-	16/10 18:02 BST
Hofner 6 String Violin Guitar	\$535.00	4	12/10 13:57 BST
Marshall 1968 superlead plexi in purple !!!!	\$2425.00	11	11/10 17:32 BST

The above from eBay⁴ relates a user interface to browse items. The interface enables a user to browse items located in the United Kingdom or items that are available to United Kingdom buyers.

Claim 1 requires a determination of an availability of an offering in a particular region based on offering listing characteristics including a listing currency of the offering. In contrast, the above from eBay relates a user interface that may be used to browse items located in the United Kingdom or items that are available to United Kingdom buyers. Including an item on an interface for browsing based on the availability of the item to United Kingdom buyers is not the

⁴ eBay, page 15.

same as determining an availability of an offering in a particular region based on a listing currency of the offering. In like manner, including an item on an interface for browsing based on the location of the item in the United Kingdom is not the same as determining an availability of an offering in a particular region based on a listing currency of the offering. Indeed, where eBay looks to an item in relation to a buyer and an item in relation to the location of an item the limitations of claim 1 requires a determination of an availability of an offering based a listing currency of the offering. For these reasons eBay fails to teach or suggest the limitations of claim 1.

The above remarks are also applicable to a consideration of independent claims 7, 14, 18, 31 and 37.

Claims 8-10 and 12 depend on independent claim 7. Claims 15-17 depend on independent claim 14. Claims 19-22 and 24 depend on independent claim 18. Claims 32-34 and 36 depend on independent claim 31. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 8-10, 12, 15-17, 19-22, 24, 32-34, 36 and 38-40 under 35 U.S.C. § 103(a) is also addressed by the above remarks.

Claims 4 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay in view of Applicant's Admission (regarding parsing of universal resource locators).

Claim 4 depends on independent claim 1. Claim 28 depends on independent claim 25 and the above remarks are also applicable to a consideration of independent claim 25.

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103(a) is defective for the reason that the alleged Admission also fails to teach or suggest the above quoted limitations of claim 1 as discussed in the above remarks which are also applicable to a consideration of independent claim 25. Accordingly, eBay, whether considered separately or in combination with the alleged admission, fails to teach or suggest each and every limitation of independent claims 1 and 25 as is required to support a *prime facie* case of obviousness in rejecting of the independent claims of the present application under 35 U.S.C. § 103. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 4 and 28 under 35 U.S.C. § 103(a) is also addressed by the above remarks.

Claims 11, 23 and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay in view of McClenahen (PTO-892, Item:V).

Claims 11, 23 and 35 respectively depend on independent claims 1, 18 and 31.

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103(a) is defective for the reason that McClenahen also fails to teach or suggest the above quoted limitations of claim 1 as discussed in the above remarks which are also applicable to a consideration of independent claims 18 and 31. Accordingly, eBay, whether considered separately or in combination with McClenahen, fails to teach or suggest each and every limitation of independent claims 1, 18 and 31 as is required to support a *prime facie* case of obviousness in rejecting of the independent claims of the present application under 35 U.S.C. § 103. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 11, 23 and 35 under 35 U.S.C. § 103(a) is also addressed by the above remarks.

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay in view of Pollick (Paper # 20041209, PTO-892, Item: VV).

Claim 13 depends on independent claim 7.

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that Pollick also fails to teach or suggest the above quoted limitations of claim 1 as discussed in the above remarks which are also applicable to a consideration of independent claim 7. Accordingly, eBay, whether considered separately or in combination with Pollick, fails to teach or suggest each and every limitation of independent claims 1 and 7 as is required to support a *prime facie* case of obviousness in rejecting of the independent claims of the present application under 35 U.S.C. § 103. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claim 13 under 35 U.S.C. § 103(a) is also addressed by the above remarks.

Claims 1-3, 6, 25-27 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay Internet Archive Wayback Machine (PTO-892, Item: U; hereinafter “eBay”).

Claims 2 and 3 depend on independent claim 1. Claim 6 depends on independent claim 7. Claims 26, 27 and 30 depend on independent claim 25.

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that eBay fails to teach or suggest the above quoted limitations of claim 1 as discussed in the above remarks which are also applicable to a consideration of independent claim 25. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 2-3, 6, 26, 27 and 30 under 35 U.S.C. § 103(a) is also addressed by the above remarks.

Claims 17 and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay.

Claim 17 depends on independent claim 14 and claim 40 depends on independent claim 1.

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that eBay fails to teach or suggest the above quoted limitations of claim 1 as discussed in the above remarks which are also applicable to a consideration of independent claims 14. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 17 and 40 under 35 U.S.C. § 103(a) is also addressed by the above remarks.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4046 to facilitate prosecution of this application.

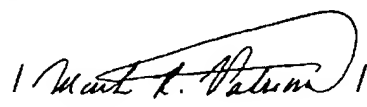
If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
408-278-4046

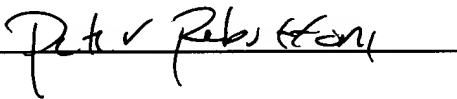
Date March 27, 2008

By


Mark R. Vatuone
Reg. No. 53,719

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 27 day of March 2008.

Name



Signature

